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EXAMINER

NOVOSAD, JENNIFER ELEANORE

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/902,910

Applicant(s)

PARROTT, JOHN C.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

At the outset, the Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers in this application, all further correspondence regarding this application should be directed Group Art Unit 3634.

#### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 10, as on page 9, line 23. *Further*, the drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "10" has been used to designate both the freshness chamber (see page 9, line 23) and the cabinet (see page 9, line 29).

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, (a) the overlapping flaps, as in claim 2, (b) the mounting means and connecting rod, as in claim 6, (c) the adjustable connecting rod, as in claim 8, and (d) the curtain attached to the sidewalls, as in claim 17, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

#### ***Abstract***

Applicant is reminded of the proper language and format for an abstract of the disclosure.

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The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc, as in lines 1 and 3.

*Accordingly*, "In accordance with the present invention a" in line 1 should be changed to -A--, and "is disclosed" in lines 2-3 should be deleted.

### ***Specification***

The disclosure is objected to because of the following informalities:

On page 6, line 20, it appears that "on" should be changed to -one--.

On page 14, line 33, a --- (period) should be inserted after "plate".

On page 17, lines 22 and 27, "maybe" should be changed to -may be--.

Appropriate correction is required.

The use of the trademark Velcro has been noted in this application, e.g., page 12, line 35, page 13, line 3, and page 15, line 35. It should be capitalized wherever it appears and be accompanied by the generic terminology. It is noted that page 13, line 28 properly refers to the trademark Velcro<sup>TM</sup>.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### ***Claim Objections***

Claims 15-17 are objected to because of the following informalities:

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In claim 15, line 4, it appears that --at least one-- should be inserted before “flap”, in view of line 3.

In line 4 of claims 16 and 17, it is strongly suggested that --, the thermal barrier-- be inserted after “walls” to clarify that the barrier comprises the proceeding structural elements.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-15, 16, 17, and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation “when said cabinet is closed” in line 9 of claim 1 and line 11 of claims 16 and 17 (note also claims 11, 13, 15, and 20) renders the claims indefinite it is unclear what the structural relationship is between the cabinet and the door storage area when the cabinet is “closed”. *Further*, “when said cabinet is opened” in claim 12, line 4 (see also claim 14) renders the claim indefinite it is unclear what the structural relationship is between the cabinet and the door storage area when the cabinet is “opened”.

Claim 10 is rendered indefinite since the claim depends from itself. For simplicity, i.e., so that there is proper antecedent basis for the limitations in claim 10, the claim has been examiner as though it depends from claim 9. *Accordingly*, claim 11 is rendered indefinite since the claim

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depends from itself. For simplicity, i.e., so that there is proper antecedent basis for the limitations in claim 11, the claim has been examiner as though it depends from claim 10.

Claim 12 is rendered indefinite since the claim repeats structure, i.e., the motor and light sensor, set forth in claim 11, the claim from which it depends and accordingly it is unclear whether the same motor and light sensor, set forth in claim 11 are being referenced in claim 12.

Claims 13 and 14 are rendered indefinite since it is unclear whether the displacement apparatus "further", i.e., in addition to the motor and light sensor set forth in claim 11, comprises an activation shaft. Accordingly, the structural relationship between the motor, light sensor and activation shaft is unclear. It appears that perhaps claims 13 and 14 should each depend from claim 9.

Claims 18 and 19 are rendered indefinite since the claims recite a "kit" which is simply a list of elements. However, it is unclear what specific structure of claims 1 and 3 is intended to be claimed as part of claims 18 and 19, respectively, since claims 1 and 3 recite more than a "list" of elements, i.e., claims 1 and 3 link the structural elements together. Accordingly, it is suggested that the specific structure intended to be claimed in claims 18 and 19 be incorporated therein.

Claim 20 is rendered indefinite since there is improper antecedent basis for the limitations "said door storage area" and "said cabinet". *Further*, it is unclear what specific structure of claim 1 is intended to be claimed in claim 20 and what role that structure plays in the "method" recited in claim 20, i.e., it is unclear whether the method comprises the steps of "providing a thermal barrier having...". *Furthermore*, it is unclear how the temperature is reduced.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

*Insomuch as the claims are best understood (in view of the rejections under 35 USC § 102 as advanced above), claims 1, 3-7, 9, 15, 16, 18, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Layne '548 (Figure 1).*

Layne '548 discloses a thermal barrier (Figure 1) comprising a translucent material (see column 32-34) curtain (16 and 18 collectively) having vertical slits dividing the curtain into strips (14); an attachment device (24, 26, 28, and 34 collectively) for securing the curtain (16 and 18) to an upper surface of the cabinet (10) which is defined by a mounting means (26 and 28) defining a bracket and a connecting rod (at 34) which is rotatably affixed to the mounting means (see Figure 3); a displacement apparatus (at 30) for displacing at least one the flaps from alignment with the adjacent flaps (see Figure 3), i.e., the left flap of 16 is out of alignment with the right flap of 18, defining a protrusion (see Figure 2); and the curtain having stabilizing adapters (in 20) defining weights. Layne '548 is also considered to teach a kit comprising a thermal barrier as called for in claims 18 and 19. Layne '548 is further considered to teach the structure capable of performing the method step of reducing the temperature in a cabinet.

*Insomuch as the claims are best understood (in view of the rejections under 35 USC § 102 as advanced above), claim 17 is rejected under 35 U.S.C. 102(b) as being anticipated by Layne '548 (Figure 6).*

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Layne '548 discloses a thermal barrier (Figure 6) comprising a translucent material (see column 32-34) curtain having vertical slits dividing the curtain into strips (14); an attachment device (62 and 52) for securing the curtain to the side of the cabinet; a displacement apparatus (56 and 58 – see Figure 8) for displacing at least one the flaps from alignment with the adjacent flaps (see Figure 6).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Layne '548 as applied to claims 1, 3-7, 9, 15, 16, 18, 19, and 20 above, and further in view of Finkelstein *et al.* '237.

Layne '548 discloses the barrier as advanced above.

The claim differs from Layne '548 in requiring the flaps are overlapping.

Finkelstein *et al.* '237 teach a thermal barrier which comprises overlapping (at 24) flaps (11 and 11').

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the barrier of Layne '548 with overlapping flaps, to decrease the loss of air through the slits thereby producing a more energy efficient barrier.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Layne '548, alone.



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Layne '548 discloses the barrier as advanced above.

The claim differs from Layne '548 in requiring the connecting rod to be length adjustable.

Although Layne does not disclose the rod as being length adjustable, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have provided the barrier of Layne '548 with a length adjustable rod for ease in assembly.

#### ***Allowable Subject Matter***

Claims 11-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims, i.e., specifically claims 1, 6, 9, 10, and 11.

The following is a statement of reasons for the indication of allowable subject matter: The prior art of record fails to show or suggest a thermal barrier as called for in claim 9, whereby the displacement apparatus defines a motor and a light sensor which activates the motor to rotate the connecting rod causing a flap to be moved out of alignment with adjacent flaps (see lines 6-7 of claims 11, 12, 13, and 14), as specifically called for in the claimed combination in claim 11.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cunningham, Eliason, Gidge *et al.*, Mitchell, Abadi *et al.*, and Edwards show various thermal barriers.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-305-3597 for regular communications and (703)-305-3597 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1113.

Jennifer E. Novosad/jen  
August 26, 2002



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